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Article Title: Constructing Uncertainty: Unions and Migrant Labour in Construction in Spain and the UK

Year of publication: 2012

Link to published article:

<http://link.aps.org/doi/10.1177/0022185611432388>

Publisher statement: © Sage 2012

Constructing uncertainty:

Unions and migrant labour in construction in Spain and UK

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(forthcoming in *Journal of Industrial Relations*, 54, 1, 2012)

Abstract

The article provides a conceptualisation of the link between recent migration flows and labour market uncertainty through the analysis of a critical example, the construction sector (characterised by economic volatility, worker mobility, employment insecurity, safety risk) in the UK and Spain (countries with large immigration, flexible labour markets and volatile construction sectors). Transnational labour mobility can be seen as a structural response to recent European dilemmas on how to combine flexibility and security, through the creation of a hyper-flexible buffer of migrant workers who, being disposable in case of downturn, can carry most of the uncertainty burden without causing political problems. This raises two issues: the social sustainability of such segmentation, in particular with regard to occupational health and safety, and the role organised labour can have on it, in particular in organising such workers. The issues are analysed through labour market statistics and interviews with unionists, migrant organisation representatives, employers and employment policy officers in both countries.

Keywords: Trade unions; migration; construction; uncertainty; crisis

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Introduction

Recent cross-border movement of workers in Europe, especially between old and new member states of the European Union, is characterised by high circular mobility, which does not correspond to the technical definition of migration, i.e. permanence abroad for over a year (nevertheless, for the sake of simplicity, we will use the word migrants). Its specificities in terms of transnationality, flexibility and high employment rates make this phenomenon an interesting development for European labour markets, possibly approximating them to the long-invoked American model of high flexibility and mobility. In particular, foreign labour, thanks to its mobility, may play the function of ‘buffer’ in relation to employment uncertainty, carrying a burden of insecurity that local European populations are unwilling to bear. Such development raises questions of social sustainability and of the role organised labour can have in regulating and possibly organising this flux of workers.

The economic crisis that started in 2008 suddenly highlighted the social problems connected to new international mobility of workers. The issue of social sustainability of highly mobile migration has therefore emerged.

This article discusses how far recent European migration has played the role of flexible ‘buffer’, if such role is socially sustainable, and what role organised labour can have towards it. To do so, it will focus on the case of the construction sector in Spain and the UK. The construction sector, with its inherently mobile workers and places of production, seasonality, and relevance of employment as well as safety risk, is an extreme case of link between migration and flexibility, especially in the light of the recession of 2008-09. Amongst the EU large countries, Spain and UK have been particularly hit by the crisis in the construction industry, and both had experienced large increases of immigration in the preceding period, although from different origins: especially Poland, Slovakia and Baltic states to the UK, as against Latin America, Morocco and Romania in Spain. In the UK accurate representative

data are missing, but it is estimated that the number of foreign workers in the construction sector before the last recession accounted for at least 10% of the sector's employment, and above 30% in London (Clarke 2010). In Spain, social security data indicate that they were 30%. In both countries, trade unions have avoided exclusionary standpoints towards these workers, have provided services to them, and tried to reduce their extreme vulnerability, but still lack resources and clear strategies to organise them.

The article proceeds as follows. Firstly, the theoretical link between labour market uncertainty and migration is explored through the analysis of literature, reports and data. Secondly, the case selection and methodology are presented. Thirdly, we describe the role of migrants in the two construction sectors, in particular during the recent crisis. Fourthly, we address the issue of social sustainability of migration in construction through the important aspect of occupational health and safety. Fifthly, we compare the union responses in the two countries. We then conclude on the viability of the use of migration as labour market buffer.

Recent migration: a solution to Euro-sclerosis?

The growing link between migration and employment precariousness has been highlighted recently by sociologists, economists and migration experts alike (e.g. Crouch 2011, Standing 2009, Anderson 2010). Since the early 1990s, European employment policies have been characterised by the dilemma of how to increase flexibility in a socially sustainable way, which was best portrayed by the new term 'flexicurity'. Cross-border worker mobility, especially but not only within the EU, offers a possible solution to the problem of combining flexibility and security: the creation of a hyper-flexible buffer of migrant workers who, being disposable in case of downturn, can carry most of the uncertainty burden without causing political problems. The result of such a solution would be a novel form of segmentation, primarily by employment security and flexibility rather than just wage or working conditions.

Until the 1990s, immigration into the richer western European countries until the 1990s was characterised by a tendency to settle locally and permanently, despite the theoretically temporary nature of ‘Gastarbeiter’ schemes, and by relatively low activity rates, especially female. The more recent movement, however, is characterised by more frequent movement, often of a transnational nature, and higher labour market participation.

Recent European immigration is essentially labour migration. Just before the economic crisis, in the old EU member states, the activity rate of new member states’ citizens was, at 78%, much higher than that of nationals (67%) and of non-EU born (66%) (EC 2008). Cheap transport links and the near-absence of border controls make circulatory and short-term, unplanned migration possible. The official European Union’s view of recent intra-EU worker mobility has been extremely positive (European Commission 2006a, 2006b, 2008): the free movement of workers has helped GDP growth and inflation control in the host countries, and reduced unemployment in the countries of origin. The European Commission even designated 2006 as the ‘European Year of Workers’ Mobility’ to promote the idea further, and the following year it proposed a European Migration Policy fostering circular migration. Following the positive experience of UK, Sweden and Ireland in 2004-06, most other old EU member states, including Spain, opened their borders to workers from the new member states. In a parallel political move intended to grasp the benefits of legal labour migration, Spain in 2005 enacted the largest program of undocumented migrant worker legalisation in EU history (678,000 regularised workers), promoted by trade unions and employers (Miguélez and Recio 2010).

These general positive evaluations need to be looked at more in detail, given that new migrants are very disproportionately employed in certain sectors and certain professions. In 2007, citizens from the EU10 (new member states) represented 1% of the EU15 (old member states) population, having risen from 0.4% in 2003, but they account for as many as 1.9% of

the employed in elementary occupations and 0.9% of plant machine operators, while they are still an insignificant number (0.1%) in skilled occupations (EC 2008¹).

It would be simplistic to see intra-EU mobility as just a strategy, by governments and employers, to lower labour costs and weaken trade unions, according to the traditional Marxist view of the 'reserve army' (Castles and Kosack 1973). In fact, wages seem to have been affected only marginally in the EU15, even in sectors with most new foreign workers (Brücker et al. 2009). In any case, in Western Europe already for a while real wages had been stagnant, and unions declining: so there was no urgent need, for EU employers, to import foreign labour to stop wage or union growth. Sommers and Woolfson (2008) have argued that by recurring to mass migration, the EU is aping the US growth model of the last thirty years, based on the attraction of cheap and flexible foreign labour. But more than low costs, the specific attractive feature of the new labour supply relies exactly in their 'mobility', which offers a corrective to the long-blamed 'sclerosis' of European labour markets.

Migration experts have noticed that the EU has an 'almost desperate structural need, in both demographic and labour force terms, for increased intra-European population movements' (Favell 2008: 704). Geographic mobility is much lower in the EU than in the US (Krieger and Fernandez 2006). Moreover, despite nearly a decade of 'flexicurity' promotion, labour market flexibility meets, in Europe, clear social, political and economic barriers. Not only did the governments of France, Italy and Germany encounter mass protests over their labour market reforms. The financial crisis demonstrated that labour market uncertainty is a problem for the economy as well, as it inhibits responsible credit, confident consumption and thereby depresses demand (Crouch 2011). In this perspective, transnational employee mobility can appear as the optimal solution within a segmented labour market, where the burden of uncertainty is allocated to workers from new migrants.

These workers share a number of positive (from the employers' perspective) characteristics of migrants in general, as described in the founding work by Piore (1979): they are adaptable and mobile; used to long-hour and flexible employment regimes; more sensitive to monetary incentives and less sensitive to prestige considerations; and not part of the polity and therefore governments can largely ignore their opinions. But they also have an additional 'asset' in comparison to previous immigrants into the EU: they tend to be temporary. As Piore had put it, 'it is chiefly the temporary character of the migration stream that makes these migrations (...) of value to industrial society' (Piore 1979: 52). In fact, recent research in Britain has disclosed employer strategies involving the frequent replacement of migrant nationality groups, in an even deeper form of segmentation than Piore had expected (MacKenzie and Forde 2009). In the case of intra-EU migrants, geographic proximity and the existence of at least some social security or family safety net in the countries of origin, enable these workers to display very high activity rates, to return home in case of job loss, and not to bring their dependants along. In addition to voluntary mobility, a more extreme form of transnational flexibility is achieved through the 'posting of workers', which is increasingly used to temporarily move cheap labour from the new member states to the West, especially in agriculture and construction (Cremers 2011). To summarise, recent migratory movement in the EU, despite different regulations, presents resemblances with the intra-NAFTA, insofar as both differ from traditional postcolonial, guestworker and asylum migrations, and tend to lead to exploitative dual labour markets (Favell 2008).

Yet a number of questions arise. First, are these new migrant workers really so flexible and mobile? Secondly, if they are segregated in the most insecure jobs, is such segregation socially sustainable in the long term, i.e. resistant to socialisation, but also not feeding social unrest or inter-community tensions? Moreover, is it sustainable for the workers themselves? As the European Foundation for the Improvement of Working and Living Conditions has

admitted (Krieger and Fernandez 2006), mobility comes at big social costs for the workers themselves and their families. And thirdly, what role can trade unions have in this process? Can they accommodate such segregation, as a form of indirect protection of national workers' more secure position, or can they act as a socialisation bridge, narrowing the gap between national and foreign employees?

The early experience of intra-EU migration after EU enlargement seem to confirm that workers from the EU10 have occupied precarious labour market positions in all EU15 countries, including those that did not open their borders to them. As the global recession started, Woolfson and Likic-Brboric (2008) suggested that these migrants are carrying an unequal burden of 'toxic' risk, in terms of both precarity and dangerous working conditions. The economic sectors affected most severely by the crisis (construction, manufacturing, finance and travel-related services) employ high numbers of foreigners, making it reasonable to expect migrants to pay a higher cost than average (Martin 2009). This is also true for non-EU nationals: Eurostat data show that in the last quarter of 2008 (when the crisis started to hit) unemployment increased much more sharply for them (2 percentage points) than for EU nationals (half percentage point). In Ireland, EU10 citizens, while being 6% of the workforce, made 24% of the employment losses in the twelve months to June 2009, and during 2009 the number of EU10 employees fell by 21.1%, while that of Irish nationals by 6.7% (Central Statistics Office). New mobile European workers have apparently lived up, from the point of view of western economies, to their reputation of being 'disposable'. However, many of these 'ideal mobile workers' appear to have settled (Krings et al 2009), and Polish job centres are yet to register any significant number of return migrants.

For a better grasp of the nature of new flexible migration, we propose a sector/country approach, given that employers needs for migrants vary by sectors (Caviedes 2010) but are also shaped by different national actors (Watts 2002). We select construction in Spain and the

UKn as case where the phenomenon is most visible. The comparison allows us to address, in sequence, the following questions: To what extent is migrant labour a buffer bearing the burden of labour market uncertainty? Insofar as it has such role, is this socially sustainable? Comparing two countries facing the same problem, do actors, and notably unions, have discretion on how to react to this structural phenomenon?

Spain and UK as critical cases: background and methodology

In the EU, three countries have consistently occupied the three first positions in net immigration during the 2000s: Spain, Italy and UK (Eurostat data). These three countries also have flexible labour markets, at least at the margins: the UK traditionally, Spain since the early 1990s and Italy after more recent reforms in 1997-2003. Interestingly, the EU countries with more rigid labour market, such as Germany, France and Sweden, have had much smaller immigration flows. Of these three countries, in UK and Spain the construction sector has been more important and the crisis that started in 2008 has been felt more, especially in terms of unemployment. We therefore select for our study UK and Spain as best cases for the study of the relationship between labour market uncertainty and migration. While UK and Spain present the same problem in a clear way, their institutional settings differ, allowing to test for variation in terms of institutional responses and framing.

Spain

Immigration in Spain is a relatively recent phenomenon and was associated, in 1995-2007, with a period of fast growth especially in the construction industry, which doubled its share of employment from 6.9% to 11%. Employment in the sector increased from 1.2m to 2.8m in that period.

The Spanish labour market achieved flexibility through segmentation and notably the large use of temporary employment contracts, covering, in 2007, 32% of the workforce. According to data from the *Muestra Continua de Vidas Laborales* database (social security), in 2007 43% of immigrants had temporary jobs, 14 points more than for Spanish nationals. In construction this gap is even higher, at 25 point, and temporary contracts for foreigners tend to be of a shorter duration than for Spanish counterparts (data: LFS). According to a Ministry of Labour spokesperson, foreign workers tend to be given temporary contracts because their residence permit is also temporary ('La construcción concentra casi el 90% del aumento del empleo en Cataluña', *El País*, 27/1/2007), revealing how uncertainty is constructed through mutually reinforcing migration and labour market regulations.

The share of unskilled workers (*peones*) among immigrants was double that among Spanish nationals (30% vs 15%). Immigration in Spain was characterised, before the crisis, by high employment rates and high geographic mobility, especially in the agriculture and construction sectors (Pumares et al. 2008). Spain, like other Mediterranean countries, is also characterised by a large share of undeclared economy, which itself attracts immigration, and in particular undocumented immigration.

UK

The British labour market is unique among the 'old' EU member states for its low collective bargaining coverage, low employment protection and light working time regulation. Low employment protection results in limited need for temporary contracts. A distinctive extreme form of flexibility is achieved through Temporary Employment Agencies, more important than in the rest of the EU and involving no employment security at all, even in case of pregnancy.

The British migration policy in the decade before the economic crisis was clearly driven by employers' flexibility needs (Menz 2010). In the construction sector, use of migrant labour has also been due to national underinvestment in training (Clarke 2010).

Immigrants occupy the lowest strata in the British labour market, receive the lowest average pay of all migrant groups (Clark and Drinkwater 2008), and are the largest and fastest growing group of 'vulnerable workers' (TUC Commission on Vulnerable Workers 2008). The majority of them (53% until 2008) are recruited through temporary employment contracts, while only 6% of the British workforce has a temporary contract (data: Worker Registration Scheme and LFS). Even more worryingly in terms of employment security, 40% of them are employed through Temporary Employment Agencies, as against 4% of British nationals (data: *ibidem*). Tellingly, migrants themselves display generally negative views of agency work, seen as a form of discrimination, rather than as an opportunity or a 'stepping stone' (Meardi 2009, McKay and Markova 2010).

Even if not as sharply as in Spain, the growth of the construction sector in the period until 2007 was accompanied by an increase of migrant workers, especially from the new member states. LFS data, which notoriously underestimate the number of construction migrant workers, indicate that between 2002 and 2008 the share of foreign born among construction workers had increased from 5% to 8%.

Methodology

The information for this article comes from official statistical data, official reports, secondary literature and interviews with privileged observers in each country. In line with aspects of action research, the research agenda was elaborated in a workshop with representatives of unions, employer association and migrant associations, held in Barcelona in February 2010. 13 in-depth, semi-structured interviews were conducted during 2010 with representatives of

all main parts involved in each country: unions, employers, migrant organisations, Health and Safety authorities. Seven interviews were carried out in the UK and five in Spain. In addition, an interview was carried out with the construction trade union *Budowlani* in Poland, as a sending country.

Constructing insecure workers

The flexible buffer function of migrant labour can be tested in the case of the recession in construction, during which sector employment fell from 2.8m to 1.7m in Spain, and from 2.4m to 2.1m in the UK (Table 1). In Spain, the crisis has impacted migrant construction workers more than anybody else. Between 2008 and 2009 total employment in Spain fell by 7%, and in construction by 23% (LFS data). According to the Migration Survey of the Instituto Nacional de Estadística (that is carried out simultaneously to the Labour Force Survey), 14% foreign workers in the whole economy, and as many as 64% of foreign workers in construction lost their jobs. Of those foreign workers who lost their construction jobs, only 12% had found jobs in other sectors of the Spanish labour market.

[Table 1 about here]

In the UK, employment in construction has fallen by 4% in 2009 as against 2.1% for the whole economy (van den Brink and Anagboso 2010). The smaller fall than in Spain is largely due to the different structure of the British construction industry, with a bigger share of large public projects, less linked to the economic cycle, and a smaller share of the very volatile second-home market. In the UK there is no equivalent statistical source to the migrant-focussed Spanish National Immigrants Survey and annual Migration Surveys, and the most similar data, from the Labour Force Survey, notoriously underestimates the number of migrants and especially migrant construction workers (and therefore of their job losses), as it is a household survey neglecting temporary accommodations (van den Brink and Anagboso

2010). But even with these limitations, LFS data indicate more job losses for foreign workers than for nationals. In 2009, for the whole of the economy foreign workers' employment fell by 3.7%, while for British nationals by 2.2% (Coleman 2010). As in Spain, the gap in employment elasticity between nationals and immigrants is larger in construction than in the whole economy (Table 1). The real gap may be much larger due to the underestimation of foreign workers in constructions, where LFS data are collected from households and migrants are often not detected, in comparison to manufacturing, where they are collected from employers, and show a faster employment fall.

Our interviews, combined with national reports, reveal both similarities and differences in the patterns of segregation and unequal distribution of uncertainty between national and foreign workers in the industry. In the UK fragmented economic structure, segregation occurs mostly by subsector and company. Foreign workers work mostly in smaller construction sites, for smaller sub-contractors, for Temporary Work Agencies or as self-employed. In many cases Agencies are themselves transnational, and small companies are set up by foreign workers: in London operate around 500 small and micro Polish construction firms.

The more state-regulated Spanish economic structure results instead into segregation within workplaces, by jobs, occupational groups and shifts (foreigners are more frequently found on night shifts). The phenomenon of sub-contracting chain is widely encountered too, but has been limited by the Law 32 of 2006, setting a maximum of three links in a subcontracting chain in construction. While the UK construction sector has long been characterised by the highest rate of self-employment in the EU (van den Brink and Anagboso 2010), Spain introduced stricter regulations in 2004 to prevent fake self-employment, but is affected by an estimated larger share of undeclared work (a unionist mentions the case of undocumented foreign found working in the construction of barracks for the Guardia Civil, which should have been responsible for repatriating them). Moreover, Temporary Work Agencies are

banned from Spanish construction sites, although this ban has been weakened by new regulations in 2010 (Cremers 2011).

Different national groups typically occupy different jobs and socialisation is limited between them even when working for the same company: a Spanish unionist mentions the cases of separate canteens for North African and Latin American workers. Such segregation and the undeclared economy are closely interlinked. Many companies operating in different sites combine regular and irregular workers, and present on each site the same regular work permits corresponding to their regular workforces, as it is not generally controlled whether the work permits correspond to the workers actually operating on the site. Migrant workers operate at both ends of the occupational structure: Romanians and Moroccans tend to work on the most unskilled jobs, while Poles and many Latin Americans often occupy the most specialised positions, such as electricians and welders. Focus groups with foreign construction workers in Madrid have revealed that their self-perception is one of work without rights (whether employment is regular or not), discrimination and lack of support (Fundación Laboral de la Construcción 2005).

In the end, both forms of segregation result in higher employment uncertainty. The ‘variety of capitalism’ between Spain and UK results ironically in a converging ‘variety of non-compliance’, whereby employers differ in the regulations they avoid, but not in their resulting practices.

The dark side of uncertainty: Health and Safety risk

A major implication of uncertainty in construction is health and safety (H&S) risk. There are several reasons why migrant workers may undergo higher risk than nationals: segregation into the most dangerous jobs, sub-sectors and companies; worse or different H&S training; different attitudes to risk, and willingness to monetarise it; poor awareness of informal local

practices; higher turn-over and therefore, on average, shorter presence on sites and power familiarity with local conditions (Rial González and Irastorza 2007; McKay, Craw and Chopra 2006). Woolfson (2006) had raised the hypothesis of a link between migration and worsening occupational safety: according to this view, the decline of fatal accidents in countries such as Estonia, Slovakia and concomitant increase in countries such as Sweden and UK after 2004 (Eurostat data) would mean that accidents are being ‘exported’ together with workers.

Interviewees overwhelmingly confirm that H&S risk is probably higher for migrant workers in both countries.

In the UK, a Unite officer states that ‘our members repeat that they need to be more careful when foreigners are on site’, and a H&S inspector in London mentions anecdotes such as Afghans seeing construction labour as perfectly safe in comparison to life in their own country, or Poles struggling to understand the logic of a risk assessment. An activist of the London Hazards Centre (an NGO founded by union H&S reps and sponsored by London Council) mentions that foreign workers often ignore their entitlements to sickness benefits and therefore keep working when in poor health, increasing their risk. A H&S Executive (HSE) officer in the UK reports that the most serious accidents occur very early in the project or very early after the arrival of the individual on the project. However, statistical confirmation is scarce in the UK. Data on accidents include nationality only for death, and while they suggest an impressive increase in foreign construction workers deaths (from two in 2002-03 to twelve in 2008-09), numbers are too low to be significant. Data on smaller accidents, statistically more interesting, do not include nationality, but they do not show any general increase of occupational risk during the last decade.

The recession, despite some fears, seems not to have caused an increase in accidents, but experts fear that the destruction of capacity due to the crisis may result into higher H&S risk

as soon as the sector restarts: volatility of employment undermined the accumulation of knowledge and best practice in this area. Migrant workers' weak organisation may involve higher exposure. A UCATT unionist criticises HSE for its denial of migrants' risk and poor involvement with them. A H&S activist in London mentions a case of the death of a Polish construction worker resulting in a mere £750 fine for the employer, because no organisation had taken up the case, while in the case of British or Irish workers, worker organisations, communities or unions would have fought for much higher fines and compensations.

In Spain, the statistical association between temporary employment and safety risk is strong ($r^2=0.54$) in a study covering the 1993-2005 period (Castejón and Crespán 2007: 24). This indirectly affects migrants, more frequently on temporary contracts. The data from the Spanish Ministry of Labour and Immigration show that, in 2004 and well as in 2008, both fatal and serious accidents occurred more frequently for migrant workers than for national workers, and that workers from the enlarged EU are the most at risk. A Polish employer reveals in an interview that his employees are used to work 200-240 hours per month, with overtime remaining undeclared. The crisis may have actually worsened the situation, because the workers who kept the job may increase their working hours to compensate for the fall in the hourly pay rate.

There has been a clear improvement between 2004 and 2008, though, thanks to renewed efforts by the Labour Inspectorate and the new law limiting subcontracting, which requires company registration conditional on H&S training. A collective agreement has also introduced individual professional construction cards (*tarjetas profesionales de construcción*), again conditional on H&S training, compulsory from 2012.

An important difference between UK and Spain is apparent in the area of H&S training. UK firms have a longer experience in adapting training to the needs of non-English speakers. Until before 2004, the general practice was attaching non-English speakers to English-

speaking compatriots who could act as interpreters, but in recent years the delivery of training in foreign languages has become common practice in large companies, and politically sensitive sites such as the Olympics and Heathrow airport have gone even further by offering English language classes for their foreign workers. By contrast, Spanish employers display a striking neglect for linguistic issues. A Catalan employer representative, asked about this issue, answered with a mere: ‘yes, well, but if they have arrived here and live here, then they must understand something (...) If they have worked in the sector in their country, then they know what a helmet is, a safety net, an instrument, these are simple things’. A Spanish H&S officer comments that H&S training in such conditions may even have contrary effects on foreign workers. The limited awareness of these problems among Spanish unionists suggests that their strong class orientation results in neglecting some specific needs migrant workers may need (Martinez-Lucio and Connolly 2011).

A further H&S implication is the domino effect on the countries of origin. Polish construction unionists remember that after massive emigration of skilled construction sector workers started during the recession of 2001 (at that time, mostly towards Germany), the overall skill level, and therefore risk awareness, on Polish building sites declined, a process later magnified by the replacement with migrants from the Ukraine and other eastern countries.

Union responses

Unions could in theory choose to accommodate segmentation, to protect the national workforce, or oppose it to avoid downwards competition on employment conditions. Actual union policies, though, are strongly influenced by different institutional contexts.

Spanish unionism combines very low membership levels with political involvement since the democratic transition of the late 1970s and institutional representation rights in the workplaces. Strong ideological internationalism roots play against any exclusionary

discourse. Faced with the worse alternative of the undeclared economy, Spanish unions have been actively promoting the regularisation of migrants and their inclusion: exclusionary practices have never been an option given Spanish borders' permeability and the large number of small companies. Keeping migrant workers in the regular economy and preventing their exploitation is therefore an important priority for Spanish unions, but it has predominantly taken the form of political pressure and servicing, through regularisation campaigns and the extensive network of publicly-funded Information Centres for Migrant Workers (CITE), organised in particular by the CC.OO. (*Comisiones Obreras*) union, which are considered as a case of 'best practice' across the EU (Martinez-Lucio and Connolly 2011). Organising, by contrast, has been arduous, despite some success with Latin Americans (for language and cultural reasons, as well in some cases for their previous level organisation) than with Central Eastern Europeans or Moroccans.

Organising is hampered by the particularly high volatility of work in the Spanish construction sector, and by the less strict controls on employment and qualifications in the Spanish labour market. For instance, Spain has no Worker Registration Scheme, which in the UK imposes fees and bureaucratic duties on Central Eastern Europeans. As a result, in particular Central Eastern European workers in Spain are described by the employers as individualist and motivated by short-term accumulation, and said to be avoiding Spanish trade unions (interview with Polish employer in Spain). Unionisation is also arduous in the case of undocumented immigrants: unions report that foreign workers approach the union, typically, only after three years in the country and after having obtained regularisation (Recio et al 2006). Focus groups have revealed an overwhelming sense of distance between foreign construction workers and Spanish unions (Fundación Nacional de la Construcción 2005). In the Spanish construction sector unionisation is rather low, at 8.7% for national workers and 3.6% for immigrants (ECVT data, 2008), but in the Spanish system of representation

membership is not an important indicator given that union strength depends rather by vote in trade union elections.

In construction, as well as at the national level, union action then focuses on the political institutional level. The unions had an important role in negotiating the mentioned Law 32/2006 on subcontracting, and negotiated the national collective agreement on the Construction Professional Cards, they collaborate with the Labour Inspectorates, and are very active in the bipartite regulatory body *Fundación Laboral de la Construcción* (Construction Work Foundation).

Posted workers have occasionally been a contested issue in Spain, with a wildcat strike in 2009 in the La Naval shipyards in Sestao against subcontractors from Portugal and Eastern Europe paying below the minimum wage (Cremers 2011). However, overall, in Spain posted workers have rarely been a prominent issue, despite a strong presence of Portuguese contractors especially in the West of Spain, estimated at at least 20,000 (Cremers 2011). Contractors from Central Eastern Europe in Spain tend to involve specialised workers and, also because of the smaller wage differentials with Spain than with the UK, have generally opted to register in Spain and apply Spanish employment conditions (interview with Polish employer in Spain).

British unions, with much weaker representation and collective bargaining rights, have more interest in organising, but also more tempted by exclusionary reaction against virtually-unorganisable foreign posted workers, agency workers and self-employed workers. British unions did not contest the free movement of workers from the new member states in 2004 (unlike in countries such as Germany and Austria), but neither did they complain against restrictions on Bulgarians and Romanians in 2007. The high-profile case of strikes for ‘British jobs for British workers’ against posted workers at the Lindsey refinery in 2009 was the most prominent, if largely distorted by the media, example of a broader concern with the

conditions of ‘local labour’ (Barnard 2009, Meardi 2011). That case (as other less prominent ones during 2009-10) was in the engineering construction subsector, characterised by large projects and, exceptionally within the UK industrial relations system, by a multi-employer collective agreement, and the strikes were largely caused by a fear that the collective agreement was being undermined by foreign contractors. Our interviews show that the employer organisation ECIA (Engineering Construction Industry Association) is still committed to the compulsory collective agreement, which covers posted workers, and it issued to its members in 2009 ‘Guiding Principles’ on the use of foreign contractors and labour. The unions however fear that it could be jeopardised by European Court of Justice recent rulings on foreign providers’ freedom in the Laval, Rüffert and Luxembourg cases (Barnard 2009). Only around 6,000 posted workers are estimated to work in the UK< mostly in engineering construction.

Despite these temptations, British unions’ attitude has been mainly inclusive, with original efforts at ‘community organising’ of foreign workers, including in construction (Fitzgerald 2009). The main union concern has been defending institutionally fragile collective bargaining from the disruption of foreign companies, for instance by demanding wage transparency. In engineering construction, the only explicitly protectionist argument used by a Unite union interviewee is rather marginal and refers to the lack of expenditure into the local economy: ‘while British workers stay in guesthouses and B&B and therefore spend money in the local community, foreign workers are placed in temporary accommodation on the sites and do not spend a penny in the local economy, for instance on boats’. The same unionist mentions, as proof of union intentions, a dispute against Hungarian workers being paid €8.60/hour instead of the collectively agreed €19. When the company reacted by sending the Hungarian workers back to Hungary, thereby placing British unions against the

Hungarian workers, the union claimed, and obtained, back pay at the collective agreement level as well as reinstatement at work for the Hungarian workers.

In the rest of construction in the UK collective bargaining is largely decentralised and coverage is around 30%, while union density is around 16%. Typically, union organising in UK construction occurs through local job site protests around specific issues (Lillie and Greer 2007). In addition, the construction-sector union UCATT (Union of Construction, Allied Trades and Technicians) has made attempts at organising foreign workers, notably through community organising and with Polish organisers in collaboration with Polish trade unions, and started a Migrant Workers and then a Vulnerable Workers' advice projects. Interestingly, the Vulnerable Workers policy (in theory targeted to both nationals and migrants) replaced the Migrant Workers one, also because among union members there was some resentment at devoting resources to foreign workers specifically. The union also admits that, given low resources, servicing, especially if in part publicly funded, is more viable than organising. In this regard, there are regional differences, with the London area already permeated by foreign construction workers (at least 30% of the total) and a considerable presence of irregular employment, and the North used to more regulated and unionised employment relations, and lower share of migrant workers. In the former, organising of migrant workers is quite important (e.g. of Romanians and Poles), and in the case of the Olympic Games construction sites tensions have been avoided through the pre-emptive negotiation of 'Principles of Co-operation' that guarantee the respect of collective agreements, thereby eliminating fears of undercutting, and promote local employment through apprentices and collaboration with the local communities. In the North, instead, despite inclusive efforts (Fitzgerald 2009), a Unite officer admits that, especially after the Lindsey case, the attitude of foreign workers is hostile to the trade unions, and even Poles, despite some union attempts at involving them, rarely join the unions and there still are no Polish reps, while there are some in other regions such as

Scotland and London. This is confirmed by the Polish construction union *Budowlani*, saying that co-operation with British trade unions is actually more difficult than with the German ones, despite the ‘openness’ of the UK labour market and innovative transnational union co-operation projects (Hardy and Fitzgerald 2010).

With regard to collective bargaining, in Spain the problem is not so much ensuring collective bargaining coverage, but controlling that foreign workers are placed on the construction sector pay scale and not, by exploiting their lack of knowledge, on the lower metalworking sector pay scale (a difference of about €3,000 per year). Even when paid the legal rates, foreign workers tend to miss out on the local going rates, which tend to be 20-30% higher (Cremers 2011). In both countries, a frequent issue of concern is checking the job grading of foreign workers, and in both countries foreign workers appear to be affected by strong pay flexibility despite sector collective agreements and despite concomitant employment flexibility. In the UK unions report that foreign workers accept pay reductions of up to 33% following the recession, and in Spain the employer themselves mention reductions in excess of 25% (interviews).

Conclusion

New migrants’ situation of uncertainty is one of maximum risk and minimum ‘voice’. Our review of the construction sector in the flexible labour markets of Spain and UK illustrates that the exacerbation of mobility and flexibility is realising something feared by UK migration experts: the ‘risk that a constantly self-replacing stream of workers [from the new EU member states] could fall into the role of semi-exploited (if often compliant) ‘underclass’, with limited prospects for social mobility and integration’ (Sumption and Somerville 2010, 29).

Such a situation may respond to European labour markets' structural quest for more flexibility, but raises important issues of social sustainability. Our sector perspective has revealed convergence between the British and the Spanish models towards a similar use of 'hyperflexible' migrant labour, which is very hard to organise for the trade unions. The more volatile Spanish construction sector exacerbates the problems, as visible on H&S.

National differences in union structures have important consequences, though. Stronger state-union relations in Spain result in more inclusive political action and servicing towards immigrants by Spanish unions. By contrast, the multi-cultural, pluralist nature of the UK labour market and public sphere result in British trade unions paying more attention to linguistic diversity and community organising. In both cases, unions emerge, rather than as barriers as some media distortion and some insider-outsider view of the labour market suggest, as crucial bridges to avoid migrant segregation. But also, they still appear to be still very unsteady bridges, not yet sure to resist the torrent of flexibility.

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¹ The data are from the Labour Force Surveys, which notoriously underestimate the number of foreigners. The ratio skilled-unskilled occupation is however unlikely to be a wrong estimate.

Table 1 – Change in employment during 2009, in % of 2008 employment (data: Migration Survey, LFS)

| | Spain | | UK | |
|--------------|-----------|--------------|-----------|--------------|
| | Nationals | Foreign-born | Nationals | Foreign-born |
| Economy | -7 | -14 | -2.2 | -3.7 |
| Construction | -23 | -64 | -4.0 | -8.0 |